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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,161	06/14/2005	Thomas Gradel	190-90	2686

2746 7590 01/17/2007
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EXAMINER

WOODALL, NICHOLAS W

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/539,161

Applicant(s)

GRADEL ET AL.

Examiner

Nicholas Woodall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-14 is/are rejected.
- 7) ☒ Claim(s) 15-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 11/09/2006.

Allowable Subject Matter

2. The indicated allowability of claim 13 is withdrawn in view of the newly discovered reference(s) to Zindrick (U.S. Publication 2004/0092929). Rejections based on the newly cited reference(s) follow.
3. Claims 15-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brace (U.S. Patent 6,187,005) in view of Stucker (U.S. Patent 5,713,898).

Brace discloses the invention as claimed except for the interior surface of the sliding connecting piece comprises two points opposite the receiving means that are parallel and offset in the direction perpendicular to the longitudinal axis of the sliding connection piece. Stucker teaches a device comprising two points opposite the receiving means that are parallel and offset in the direction perpendicular to the longitudinal axis of the sliding connection piece in order to attach the device to bone

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(column 7 lines 14-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the sliding connecting piece of Brace with two points on the interior surface of the piece opposite the receiving means that are parallel and offset in the direction perpendicular to the longitudinal axis of the sliding connecting piece in view of Stucker in order to attach the device to bone.

Regarding claim 12, the combination of Brace and Stucker discloses the invention as claimed except for the points being generally triangular structures in a plane perpendicular to the direction of the transverse axis. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the points as a generally triangular flat structure in a plane perpendicular to the direction of the transverse axis, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966).

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brace (U.S. Patent 6,187,005) in view of Stucker (U.S. Patent 5,713,898) further in view of Zindrick (U.S. Publication 2004/0092929).

Regarding claim 13, the combination of Brace and Stucker disclose the invention as claimed except for the two triangular points comprising retaining teeth on two sides. Zindrick discloses a device comprising two points further including teeth on two sides in order to provide increased surface contact with the vertebral bone page 4 paragraph

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44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Brace modified by Stucker wherein the two triangular points included teeth on two sides in view of Zindrick in order to provide increased surface contact with the vertebral bone.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brace (U.S. Patent 6,187,005) in view of Stucker (U.S. Patent 5,713,898) in view of Zindrick (U.S. Publication 2004/0092929) further in view of Schafer (U.S. Patent 5,662,652).

The combination of Brace, Stucker, and Zindrick disclose the invention as claimed except for the interior face of the sliding connecting piece being concave and substantially cylindrical with a circular profile. Schafer teaches a bone plate that has a concave interior surface that is substantially cylindrical with a circular profile in order to create better contact between the bone plate and the bone surface (column 8 lines 5-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the sliding connecting piece of Brace modified by Stucker further modified by Zindrick with a concave interior surface that is substantially cylindrical with a circular profile in view of Schafer to create better contact between the bone plate and the bone surface.

Response to Arguments

8. Applicant's arguments with respect to claims 11, 12, and 14 have been considered but are moot in view of the new ground(s) of rejection. The examiner agrees with the applicant that the Hegde reference does not qualify as prior art under 102(e) because of the applicant's claim to foreign priority to document France Application

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02/16235 filed on 12/17/2002. The examiner has issued new grounds of rejection with a different reference as discussed above.


Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

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